



Journal of the Senate

Number 2—Special Session A

Thursday, January 6, 2000

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CALL TO ORDER

The Senate was called to order by President Jennings at 9:30 a.m. A quorum present—38:

| | | | |
|-----------------|-------------|-------------|----------|
| Madam President | Dawson | Kirkpatrick | Rossin |
| Bronson | Diaz-Balart | Klein | Saunders |
| Brown-Waite | Dyer | Kurth | Scott |
| Burt | Forman | Latvala | Sebesta |
| Campbell | Grant | Laurent | Silver |
| Carlton | Hargrett | Lee | Sullivan |
| Casas | Holzendorf | McKay | Thomas |
| Childers | Horne | Meek | Webster |
| Clary | Jones | Mitchell | |
| Cowin | King | Myers | |

Excused: Senator Geller

PRAYER

The following prayer was offered by Lucy Hadi, Staff Director of the Senate Fiscal Policy Committee:

Father God, we give you thanks for the many blessings you have bestowed on this great state and, especially, for the men and women who have assembled here to serve their fellow citizens.

In these days of prosperity and of peril, grant them the wisdom to know and the courage to do your will in these halls, in their homes and in their hearts.

Grant them patience and sensitivity as they debate the profound issues that are before them today. Let justice and mercy be joined in their work this day so that the laws they enact may enhance the well-being of all Floridians and be pleasing in your sight.

All this we ask in your Holy Name. Amen.

PLEDGE

Senator Jack Latvala, Republican Leader, led the Senate in the pledge of allegiance to the flag of the United States of America.

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator McKay, by two-thirds vote **SB 14-A** was withdrawn from the Committee on Criminal Justice.

MOTIONS

On motion by Senator McKay, the rules were waived and by two-thirds vote **SB 14-A** was established as the Special Order Calendar for this day.

BILLS ON THIRD READING

SB 10-A—A bill to be entitled An act relating to the execution of the death sentence; amending ss. 922.10, 922.105, F.S.; providing for the death sentence to be executed by lethal injection; providing for a person who is sentenced to death to elect a death sentence executed by electrocution; providing a procedure for making such election; providing for a person whose warrant of execution is pending on a specified date to elect a sentence of death by electrocution; providing a procedure for making such election; amending s. 27.702, F.S.; providing an effective date.

—as amended January 5 was read the third time by title.

On motion by Senator Brown-Waite, **SB 10-A** as amended was passed and certified to the House. The vote on passage was:

Yeas—37

| | | | |
|-----------------|-------------|----------|----------|
| Madam President | Dawson | Klein | Saunders |
| Bronson | Diaz-Balart | Kurth | Scott |
| Brown-Waite | Dyer | Latvala | Sebesta |
| Burt | Forman | Laurent | Silver |
| Campbell | Grant | Lee | Sullivan |
| Carlton | Holzendorf | McKay | Thomas |
| Casas | Horne | Meek | Webster |
| Childers | Jones | Mitchell | |
| Clary | King | Myers | |
| Cowin | Kirkpatrick | Rossin | |

Nays—None

Consideration of **SB 12-A** was deferred.

SB 4-A—A bill to be entitled An act relating to public records exemptions; amending s. 922.106 and s. 945.10, F.S.; providing that information which, if released, would identify the person prescribing, preparing, compounding, dispensing, or administering a lethal injection pursuant to a death penalty sentence shall be exempt from public records requirements; providing an effective date.

—as amended January 5 was read the third time by title.

On motion by Senator Burt, **SB 4-A** as amended was passed and certified to the House. The vote on passage was:

Yeas—37

| | | | |
|-----------------|-------------|-------------|----------|
| Madam President | Clary | Horne | Lee |
| Bronson | Cowin | Jones | McKay |
| Brown-Waite | Dawson | King | Meek |
| Burt | Diaz-Balart | Kirkpatrick | Mitchell |
| Campbell | Dyer | Klein | Myers |
| Carlton | Forman | Kurth | Rossin |
| Casas | Grant | Latvala | Saunders |
| Childers | Holzendorf | Laurent | Scott |

Sebesta
Silver

Sullivan

Thomas

Webster

Nays—None

SB 12-A—A bill to be entitled An act relating to capital offenses; creating the “Death Penalty Reform Act of 2000”; amending s. 27.702, F.S.; providing limitation on the filing of postconviction and collateral actions; amending s. 119.19, F.S.; revising provisions relating to capital postconviction public records production; amending s. 922.095, F.S.; revising provisions with respect to grounds for a death warrant; providing a limitation on actions; amending s. 924.055, F.S.; revising provisions with respect to postconviction review in capital cases; providing for legislative findings and intent; creating s. 924.056, F.S.; providing for capital postconviction proceedings for which a sentence of death is imposed on or after the effective date of this act; creating s. 924.057, F.S.; providing for a limitation on postconviction cases in which the death sentence was imposed before the effective date of this act; creating s. 924.058, F.S.; providing for capital postconviction claims; creating s. 924.059, F.S.; providing for time limitations on judicial review in capital postconviction actions; repealing Rule 3.850, Florida Rules of Criminal Procedure, relating to the grant of a new trial to the extent it is inconsistent with this act; repealing Rule 3.851, Florida Rules of Criminal Procedure, relating to collateral relief after the death sentence has been imposed; repealing Rule 3.852, Florida Rules of Criminal Procedure, relating to capital postconviction public records production; amending s. 27.710, F.S.; providing for the appointment of attorneys to represent persons in collateral actions; amending s. 27.51, F.S.; prohibiting specified public defenders from providing appellate representation for certain persons sentenced to death; amending s. 27.703, F.S.; providing for designation of alternative regional counsel when there is a conflict of interest; revising provisions governing the payment of such counsel; providing for the transfer of funds to be used for contracts with private attorneys and authorizing additional support positions; amending s. 27.709, F.S.; requiring the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court; amending s. 27.711, F.S.; revising provisions governing the payment of assigned counsel; providing for review of the billings of assigned counsel; creating s. 924.395, F.S.; providing for sanctions against any person within the court’s jurisdiction for certain actions taken in capital postconviction proceedings or appeals therefrom; creating s. 922.108, F.S.; providing for sentencing orders in capital cases; repealing s. 924.051(6)(b), F.S., which imposes limitations on the filing of motions for collateral or other postconviction relief and on the calling of expert witnesses; requesting the Supreme Court to study the feasibility of requiring all capital postconviction actions to be filed in the Supreme Court and requesting the Court to submit its recommendations by a specified date; providing for severability; providing an effective date.

—as amended January 5 was read the third time by title.

SENATOR SILVER PRESIDING

Senators Meek, Hargrett, Dyer, Holzendorf, Campbell, Jones and Dawson offered the following amendment which was moved by Senator Meek:

Amendment 1 (300686)(with title amendment)—On page 18, line 12, delete “. For the purposes of this” and insert: “, except that a postconviction claim that race was the basis of the decision to seek a death sentence may be established if the court finds that race was a significant factor in decisions to seek the sentence of death in the state of Florida at the time the death sentence was sought.

1. Evidence relevant to support finding that race was the basis of the decision to seek a death sentence may include statistical evidence and other evidence that death sentences were sought more frequently upon persons of one race than upon persons of another race; or as punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.

2. The defendant shall state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision to seek a death sentence in his or her case. The claim need not be raised by the defendant at the pre-trial conference. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was the basis

for the decision to seek the death sentence, the court shall order that a death sentence shall not be sought.

3. The defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision to seek the death penalty. The state may offer evidence in rebuttal of the claims or evidence of the defendant.

4. If the defendant is successful in showing that the imposition of his or her death sentence was based, in whole or in part, on his or her race, the death sentence shall be commuted to life in prison.

For the purposes of this

And the title is amended as follows:

On page 1, line 11 after “actions” insert: and exception

THE PRESIDENT PRESIDING

Senators Holzendorf, Jones and Dawson offered the following amendment to **Amendment 1** which was moved by Senator Holzendorf and adopted:

Amendment 1A (092540)—On page 1, line 25, through page 2, line 10, delete those lines and redesignate the paragraph numbers

Consideration of **Amendment 1** as amended was deferred.

Senator Brown-Waite moved the following amendment which was adopted by two-thirds vote:

Amendment 2 (763180)—On page 8, lines 6 through 12, strike all of said lines and insert:

(b) Within ~~60~~ 90 days after receiving a request for public records under paragraph (a), the person or agency shall provide written notification to the Attorney General of compliance with this subsection and shall certify that to the best of his or her knowledge and belief all public records requested have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried.

On motion by Senator Burt, further consideration of **SB 12-A** with pending **Amendment 1** as amended was deferred.

RECESS

On motion by Senator McKay, the Senate recessed at 12:02 p.m. to reconvene at 1:30 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 1:40 p.m. A quorum present—37:

| | | | |
|-----------------|-------------|-------------|----------|
| Madam President | Dawson | Kirkpatrick | Rossin |
| Bronson | Diaz-Balart | Klein | Saunders |
| Brown-Waite | Dyer | Kurth | Scott |
| Burt | Forman | Latvala | Sebesta |
| Campbell | Grant | Laurent | Silver |
| Carlton | Hargrett | Lee | Sullivan |
| Casas | Holzendorf | McKay | Webster |
| Childers | Horne | Meek | |
| Clary | Jones | Mitchell | |
| Cowin | King | Myers | |

BILLS ON THIRD READING, continued

The Senate resumed consideration of—

SB 12-A—A bill to be entitled An act relating to capital offenses; creating the “Death Penalty Reform Act of 2000”; amending s. 27.702, F.S.; providing limitation on the filing of postconviction and collateral actions; amending s. 119.19, F.S.; revising provisions relating to capital postconviction public records production; amending s. 922.095, F.S.; revising provisions with respect to grounds for a death warrant; providing a limitation on actions; amending s. 924.055, F.S.; revising provisions

with respect to postconviction review in capital cases; providing for legislative findings and intent; creating s. 924.056, F.S.; providing for capital postconviction proceedings for which a sentence of death is imposed on or after the effective date of this act; creating s. 924.057, F.S.; providing for a limitation on postconviction cases in which the death sentence was imposed before the effective date of this act; creating s. 924.058, F.S.; providing for capital postconviction claims; creating s. 924.059, F.S.; providing for time limitations on judicial review in capital postconviction actions; repealing Rule 3.850, Florida Rules of Criminal Procedure, relating to the grant of a new trial to the extent it is inconsistent with this act; repealing Rule 3.851, Florida Rules of Criminal Procedure, relating to collateral relief after the death sentence has been imposed; repealing Rule 3.852, Florida Rules of Criminal Procedure, relating to capital postconviction public records production; amending s. 27.710, F.S.; providing for the appointment of attorneys to represent persons in collateral actions; amending s. 27.51, F.S.; prohibiting specified public defenders from providing appellate representation for certain persons sentenced to death; amending s. 27.703, F.S.; providing for designation of alternative regional counsel when there is a conflict of interest; revising provisions governing the payment of such counsel; providing for the transfer of funds to be used for contracts with private attorneys and authorizing additional support positions; amending s. 27.709, F.S.; requiring the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court; amending s. 27.711, F.S.; revising provisions governing the payment of assigned counsel; providing for review of the billings of assigned counsel; creating s. 924.395, F.S.; providing for sanctions against any person within the court's jurisdiction for certain actions taken in capital postconviction proceedings or appeals therefrom; creating s. 922.108, F.S.; providing for sentencing orders in capital cases; repealing s. 924.051(6)(b), F.S., which imposes limitations on the filing of motions for collateral or other postconviction relief and on the calling of expert witnesses; requesting the Supreme Court to study the feasibility of requiring all capital postconviction actions to be filed in the Supreme Court and requesting the Court to submit its recommendations by a specified date; providing for severability; providing an effective date.

—with pending **Amendment 1** by Senator Meek, as amended.

Senators Hargrett and Holzendorf offered the following substitute amendment which was moved by Senator Hargrett and adopted by two-thirds vote:

Amendment 3 (961410)(with title amendment)—On page 35, between lines 26 and 27, insert:

Section 22. *Task Force on Capital Cases.*—

(1) *The Governor shall appoint a 15 member Task Force on Capital Cases;*

(2) *Members of the task force are entitled to reimbursement for per diem and travel expenses in accordance with section 112.061, Florida Statutes.*

(3) *The members of the task force shall be appointed by January 14, 2000. The terms of the members of the task force shall expire and the task force shall be disbanded upon submittal of its report to the the Governor, the State Supreme Court, the President of the Senate, and the Speaker of the House of Representatives.*

(4) *The staff of the Executive Office of the Governor shall provide staff support for the task force.*

(5) *The task force shall study evidence of discrimination, if any, in the sentencing of defendants in capital cases, including consideration of race, ethnicity, gender, and the possible mental retardation of the defendant. The task force shall submit its report by March 1, 2000.*

And the title is amended as follows:

On page 2, line 7, after the semicolon (;) insert: creating the Task Force on Capital Cases; providing for membership, staff, and a report;

The vote was:

Yeas—32

| | | | |
|-----------------|-------------|---------|----------|
| Madam President | Brown-Waite | Carlton | Childers |
| Bronson | Campbell | Casas | Clary |

| | | | |
|-------------|-------------|----------|----------|
| Cowin | Horne | Laurent | Saunders |
| Diaz-Balart | King | Lee | Scott |
| Dyer | Kirkpatrick | McKay | Sebesta |
| Grant | Klein | Mitchell | Silver |
| Hargrett | Kurth | Myers | Sullivan |
| Holzendorf | Latvala | Rossin | Webster |

Nays—4

| | | | |
|--------|--------|-------|------|
| Dawson | Forman | Jones | Meek |
|--------|--------|-------|------|

Senators Hargrett, Holzendorf, Jones, Dawson and Campbell offered the following amendment which was moved by Senator Hargrett and failed to receive the required two-thirds vote:

Amendment 4 (175470)—On page 19, lines 24-26, delete those lines and insert: *the earlier postconviction motion. The 90-day time period allowed for filing a successive capital postconviction action may, in the court's discretion, be grounds for a stay.*

Senators Meek, Dyer, Holzendorf, Campbell and Jones offered the following amendment which was moved by Senator Meek:

Amendment 5 (294670)(with title amendment)—On page 18, line 12, delete “. For the purposes of this” and insert: *, except that a postconviction claim that race was the basis of the decision to seek a death sentence may be established if the court finds that race was a significant factor in decisions to seek the sentence of death in the state of Florida at the time the death sentence was sought.*

1. *Evidence relevant to support finding that race was the basis of the decision to seek a death sentence may include statistical evidence and other evidence that death sentences were sought more frequently upon persons of one race than upon persons of another race; or as punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.*

2. *If the defendant is successful in showing that the imposition of his or her death sentence was based, in whole or in part, on his or her race, the death sentence shall be commuted to life in prison.*

For the purposes of this

And the title is amended as follows:

On page 1, line 11, after the semicolon (;) insert: providing an exception

Senators Meek and Jones offered the following amendment to **Amendment 5** which was moved by Senator Jones and failed:

Amendment 5A (401112)—On page 1, lines 22-30, delete those lines and insert: *of Florida at the time the death sentence was sought. If the defendant is successful in showing that the*

The question recurred on **Amendment 5** which failed. The vote was:

Yeas—9

| | | | |
|--------|------------|-------|--------|
| Dawson | Hargrett | Jones | Meek |
| Dyer | Holzendorf | Klein | Rossin |
| Forman | | | |

Nays—29

| | | | |
|-----------------|-------------|----------|----------|
| Madam President | Clary | Latvala | Sebesta |
| Bronson | Cowin | Laurent | Silver |
| Brown-Waite | Diaz-Balart | Lee | Sullivan |
| Burt | Grant | McKay | Thomas |
| Campbell | Horne | Mitchell | Webster |
| Carlton | King | Myers | |
| Casas | Kirkpatrick | Saunders | |
| Childers | Kurth | Scott | |

Senator Brown-Waite moved the following amendment which was adopted by two-thirds vote:

Amendment 6 (205176)—On page 17, line 30, delete that line and insert: *Except as provided by subsection (4) or subsection (5), all capital*

SENATOR BURT PRESIDING

BILLS ON THIRD READING

THE PRESIDENT PRESIDING

The Senate resumed consideration of—

POINT OF ORDER

Senator Jones raised a point of order that pursuant to Rule 4.8 the bill as amended should be referred to the Committee on Fiscal Policy.

RULING ON POINT OF ORDER

The President ruled the point well taken and referred **SB 12-A** as amended to the Committee on Fiscal Policy.

On motion by Senator Casas, by two-thirds vote **SB 12-A** as amended was withdrawn from the Committee on Fiscal Policy and further consideration was deferred.

SPECIAL ORDER CALENDAR

On motion by Senator Mitchell, by two-thirds vote—

SB 14-A—A bill to be entitled An act relating to the sentencing of capital felons; amending ss. 921.141, 921.142, F.S.; providing for a separate proceeding to determine whether a defendant accused of or convicted of a capital felony is mentally retarded; prescribing the penalty to be imposed if the defendant is determined to be mentally retarded; amending s. 924.07, F.S.; providing that the state may appeal a determination that a defendant is mentally retarded; providing a definition of mental retardation; providing an effective date.

—was read the second time by title. On motion by Senator Mitchell, by two-thirds vote **SB 14-A** was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—38

| | | | |
|-----------------|-------------|-------------|----------|
| Madam President | Dawson | Kirkpatrick | Rossin |
| Bronson | Diaz-Balart | Klein | Saunders |
| Brown-Waite | Dyer | Kurth | Scott |
| Burt | Forman | Latvala | Sebesta |
| Campbell | Grant | Laurent | Silver |
| Carlton | Hargrett | Lee | Sullivan |
| Casas | Holzendorf | McKay | Thomas |
| Childers | Horne | Meek | Webster |
| Clary | Jones | Mitchell | |
| Cowin | King | Myers | |

Nays—None

RECESS

The Senate recessed at 4:57 p.m. to reconvene upon call of the President.

CALL TO ORDER

The Senate was called to order by the President at 5:58 p.m. A quorum present—37:

| | | | |
|-----------------|-------------|-------------|----------|
| Madam President | Dawson | Kirkpatrick | Saunders |
| Bronson | Diaz-Balart | Klein | Scott |
| Brown-Waite | Dyer | Kurth | Sebesta |
| Burt | Forman | Latvala | Silver |
| Campbell | Grant | Laurent | Sullivan |
| Carlton | Hargrett | Lee | Thomas |
| Casas | Holzendorf | McKay | Webster |
| Childers | Horne | Meek | |
| Clary | Jones | Mitchell | |
| Cowin | King | Myers | |

On motion by Senator Burt, the rules were waived and the Senate reverted to—

SB 12-A—A bill to be entitled An act relating to capital offenses; creating the “Death Penalty Reform Act of 2000”; amending s. 27.702, F.S.; providing limitation on the filing of postconviction and collateral actions; amending s. 119.19, F.S.; revising provisions relating to capital postconviction public records production; amending s. 922.095, F.S.; revising provisions with respect to grounds for a death warrant; providing a limitation on actions; amending s. 924.055, F.S.; revising provisions with respect to postconviction review in capital cases; providing for legislative findings and intent; creating s. 924.056, F.S.; providing for capital postconviction proceedings for which a sentence of death is imposed on or after the effective date of this act; creating s. 924.057, F.S.; providing for a limitation on postconviction cases in which the death sentence was imposed before the effective date of this act; creating s. 924.058, F.S.; providing for capital postconviction claims; creating s. 924.059, F.S.; providing for time limitations on judicial review in capital postconviction actions; repealing Rule 3.850, Florida Rules of Criminal Procedure, relating to the grant of a new trial to the extent it is inconsistent with this act; repealing Rule 3.851, Florida Rules of Criminal Procedure, relating to collateral relief after the death sentence has been imposed; repealing Rule 3.852, Florida Rules of Criminal Procedure, relating to capital postconviction public records production; amending s. 27.710, F.S.; providing for the appointment of attorneys to represent persons in collateral actions; amending s. 27.51, F.S.; prohibiting specified public defenders from providing appellate representation for certain persons sentenced to death; amending s. 27.703, F.S.; providing for designation of alternative regional counsel when there is a conflict of interest; revising provisions governing the payment of such counsel; providing for the transfer of funds to be used for contracts with private attorneys and authorizing additional support positions; amending s. 27.709, F.S.; requiring the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court; amending s. 27.711, F.S.; revising provisions governing the payment of assigned counsel; providing for review of the billings of assigned counsel; creating s. 924.395, F.S.; providing for sanctions against any person within the court’s jurisdiction for certain actions taken in capital postconviction proceedings or appeals therefrom; creating s. 922.108, F.S.; providing for sentencing orders in capital cases; repealing s. 924.051(6)(b), F.S., which imposes limitations on the filing of motions for collateral or other postconviction relief and on the calling of expert witnesses; requesting the Supreme Court to study the feasibility of requiring all capital postconviction actions to be filed in the Supreme Court and requesting the Court to submit its recommendations by a specified date; providing for severability; providing an effective date.

—which was previously considered and amended this day.

RECONSIDERATION OF AMENDMENTS

On motion by Senator Hargrett, the Senate reconsidered the vote by which **Amendment 3** was adopted. **Amendment 3** was withdrawn.

The question recurred on **Amendment 1** as amended.

On motion by Senator Holzendorf, the Senate reconsidered the vote by which **Amendment 1A** was adopted. **Amendment 1A** was withdrawn.

On motion by Senator Meek, **Amendment 1** was withdrawn.

On motion by Senator Burt, **SB 12-A** as amended was passed by the required constitutional two-thirds vote of the membership, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—30

| | | | |
|-----------------|-------------|----------|----------|
| Madam President | Clary | Kurth | Scott |
| Bronson | Cowin | Latvala | Sebesta |
| Brown-Waite | Diaz-Balart | Laurent | Silver |
| Burt | Grant | Lee | Sullivan |
| Campbell | Hargrett | McKay | Thomas |
| Carlton | Horne | Mitchell | Webster |
| Casas | King | Myers | |
| Childers | Kirkpatrick | Saunders | |

Nays—7

| | | | |
|--------|------------|-------|------|
| Dawson | Forman | Jones | Meek |
| Dyer | Holzendorf | Klein | |

INTRODUCTION AND REFERENCE OF BILLS

FIRST READING

MOTION TO INTRODUCE BILL

On motion by Senator McKay, by the required constitutional two-thirds vote of the membership, the following bill was admitted for introduction outside the purview of the Governor's call:

By Senators Mitchell, Sullivan, Dawson, Forman, Burt, Brown-Waite, Latvala, Kurth, Sebesta, King, Klein, Meek, Horne, Bronson, Clary, Cowin, Campbell, Holzendorf and Silver—

SB 14-A—A bill to be entitled An act relating to the sentencing of capital felons; amending ss. 921.141, 921.142, F.S.; providing for a separate proceeding to determine whether a defendant accused of or convicted of a capital felony is mentally retarded; prescribing the penalty to be imposed if the defendant is determined to be mentally retarded; amending s. 924.07, F.S.; providing that the state may appeal a determination that a defendant is mentally retarded; providing a definition of mental retardation; providing an effective date.

—was referred to the Committee on Criminal Justice.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

RETURNING MESSAGES—FINAL ACTION

The Honorable Toni Jennings, President

I am directed to inform the Senate that the House of Representatives has passed SB 4-A and SB 10-A.

John B. Phelps, Clerk

The bills contained in the foregoing message were ordered enrolled.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of January 5 was corrected and approved.

CO-SPONSORS

Senator Kurth—SB 4-A, SB 10-A, SB 12-A

RECESS

On motion by Senator McKay, the Senate recessed at 6:11 p.m. to reconvene at 8:30 a.m., Friday, January 7.